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ZIMMERMAN CO., Inc., et al. v. DEY et al.

Sept. 20, 1917.

[93 S. E. 597.]

1. Trial (§ 368*)—Variance—Waiver—Agreed Statement of Facts.—In a suit to set aside a tax title on the ground that the purchaser obtained a tax deed without complying with the statutory requirements that all delinquent taxes should be paid, the bill alleged that the purchaser failed to pay any part of certain taxes which were paid by the owner, and the parties entered into an agreed statement of facts showing that the owner had not paid the taxes for certain years as alleged. Held, that defendant should have raised the point by objection to the evidence, and, having entered into an agreed statement of facts which contradicted in incidental details the averment of the bill, he cannot thereafter take advantage of the variance.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 284.]

2. Taxation (§ 679 (7)*)—Tax Sales—Assessment.—When land is sold to the commonwealth for delinquent taxes, the title thereto remains in the commonwealth until divested by a redemption, or a purchase in the manner prescribed by law, and while under Code 1904, § 469, the land sold is thereafter carried on the land books in the name of the former owner with a notation of the sale to indicate its terms, no further assessment of the property against the former owner for taxation can thereafter properly be made until redemption, and hence the fact that the former owner after sale paid some of the taxes noted does not relieve the purchaser from paying all the taxes for the intervening years, as required by § 666, declaring that the purchaser after certain notice in order to complete his purchase shall pay to the clerk all remaining taxes, interest, penalties, fees, and costs, and by paying all city, town, and county taxes and levies remaining unpaid, together with interest and penalties, for the expression "remaining unpaid" is modified by other portions of the statute.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 96, 153 et seq.]

3. Taxation (§ 688*)—Tax Sales—Validity.—In such case, where the owner after sale of land for delinquent taxes made payments on account of taxes which would have been properly assessed had the sale not been effected, and the clerk on sale deducted from the purchase price the amount of such payments, the failure of the clerk to demand and the purchaser to pay all sums required by the section is not cured by Code 1904, § 661, declaring that when the purchaser of real estate has obtained a deed thereto, and the same has been duly admitted to record, the right or title to such estate shall

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

stand vested in the grantee, subject to be defeated only by proof that the taxes or levies for which the land was sold were not properly chargeable thereon, that the taxes and levies properly chargeable had been paid, that notice of the application to purchase had not been duly given, or that payment or redemption of the land was prevented by fraud or concealment on the part of the purchaser; and the deed of such a purchaser may be attacked.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 151 et seq.]

Appeal from Corporation Court of Roanoke.

Bill by Janie White Dey and others against the Zimmerman Company, Incorporated, and others. From a decree for complainants, defendants appeal. Affirmed.

Hart & Hart and *Jno. Dabney Smith*, all of Roanoke, for appellants.

G. A. Wingfield, of Norfolk, and *Roy B. Smith*, of Roanoke, for appellees.

CLINCHFIELD COAL CORP. v. RAY.

Sept. 20, 1917.

[93 S. E. 601.]

1. Master and Servant (§ 206, 217 (1), 219 (1)*)—Assumption of Risk—Nature of Doctrine.—A servant assumes risk of dangers known to and appreciated by him, or ordinarily incident to the service, or open and obvious, which the law will infer are known to him.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 693, 694.]

2. Master and Servant (§ 217 (1)*)—Assumption of Risk—Changing Conditions.—The doctrine of assumed risk applies to changing conditions at the place of work of the servant, due to the progress of the work or to other operations of the master within the servant's view.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 694.]

3. Master and Servant (§ 226 (1)*)—Assumption of Risk—Dangerous Operations—Mining.—A miner did not assume risks caused by the master's negligent operation of mine cars, which, colliding with a derailed car around which plaintiff was working, caused his injury.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 699.]

4. Master and Servant (§ 103 (1)*)—Miner's Injury—Methods of Work.—It was a master's unassignable duty to exercise ordinary care to prevent mine cars coming into collision with cars around which plaintiff was working, and the master was liable for injuries

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.